RECOMMENDATIONS TO THE LEGISLATURE FOR A COMPREHENSIVE APPROACH TO REFORMING STATE CONTRACTING

JANUARY 22, 2004

RICHARD BLUMENTHAL
ATTORNEY GENERAL

INTRODUCTION

My ongoing investigation has provided powerful evidence of the need to reform the process of awarding and administering state contracts. Citizens of Connecticut deserve and demand a clean, clear, transparent system of public contracting. This report contains my recommendations for reforming our system of public contracting and restoring the reliability and integrity of state contracting agencies and state contracts.

There is strong, persuasive evidence that the current system is fundamentally flawed, that abuses have led to waste and criminal wrongdoing, and that key defects must be remedied. While my investigation is not complete, the information that we have obtained so far shows that the causes and consequences of the current state contracts controversy may not be isolated, occasional or superficial, but instead may be deep-seated, recurrent and systemic. Disclosures so far show that flaws and defects in the present system have permitted it to be gamed and exploited.

Contracting processes must be more consistent and resistant to abuse. The contracting process must be open, accountable and transparent. Ethics and contracting laws must be clarified and extended to close the loopholes that have allowed abusive and corrupt conduct. There should be an independent body to review the selection process for major contracts. Privatization contracts require special scrutiny. The law must clearly prohibit public officials from accepting gifts from anyone doing or seeking to do business with the state – a problematic area not resolved by recent legislative enactments concerning public construction contracting. Agencies that participate in major contracting and procurement must improve their own ethics oversight and training. External oversight by appropriate authorities must also be strengthened, including the provision of greater investigatory and prosecutorial tools to uncover corrupt practices. In addition, existing criminal, administrative and civil sanctions must be swifter and more severe in order to adequately punish and deter corrupt contracting practices. These reforms and others are described in detail below.

SUMMARY OF RECOMMENDATIONS

Highlights of my detailed recommendations for reform include the following:

1. Review by an independent board of all major state contracts.

2. Development of clear procedures and standards for scrutiny and evaluation of bid submissions and performance.

3. Stricter and swifter sanctions for unethical or illegal practices.

4. Scrutiny of all privatization contracts by the proposed independent contract review body, which will develop standards for approving such contracts to ensure that they achieve actual fiscal savings while maintaining quality of services and protection of public health and safety.

5. Strengthened whistleblower protections.

6. A strong, legally binding code of ethics for those doing business with the state, including a ban on "revolving door" consultants.

7. A broader and stronger ban on misuse of non-public information by consultants or contractors.

8. Stronger and broader financial disclosure requirements under the Ethics Code, including required reporting of all gifts to all state officials and employees who can influence the awarding of contracts, and a total ban on most gifts.

10. Enactment of a False Claims Act, similar to that in federal law, explicitly providing the state with the right to obtain damages, civil penalties, and injunctive relief against contractors who defraud the state.

11. Requirement of sworn affidavits from contractors, subcontractors, consultants and state employees and officials concerning gifts given or received, and use or receipt of non-public information.

12. Stronger policies and training in ethics for state employees and officials involved in major contracts.

13. Requirement that selection processes maintain full, clear open records of the process, written justification for decisions, and records of communications with members of the selection panel.

14. State employees who are convicted of crimes in the performance of their public duties should be subject to loss of their pension benefits.

STATE OF CONNECTICUT PUBLIC POLICY IS FOR PUBLIC CONTRACTING TO BE DONE IN AN OPEN, FAIR, UNBIASED MANNER.

The State of Connecticut has numerous statutes concerning public contracting by state government as well as municipal governments. Courts have periodically been called upon to interpret and apply these statutes. Illustrative decisions by the Connecticut Supreme Court are: (1) *Unisys Corporation v. Department of Labor*, 220 Conn. 689 (1991); (2) *Ardmore Construction Company, Inc. v. Freedman*, 191 Conn. 497 (1983); (3) *Spiniello Construction Company v. Town of Manchester*, 189 Conn. 539 (1983); (4) *John J. Brennan Construction Corporation, Inc. v. Shelton*, 187 Conn. 695 (1982); and, (5) *Austin v. Housing Authority*, 143 Conn. 338 (1956). These decisions make it very clear that Connecticut's public contracting statutes embody the following public policy principles:

(1) The public policy against fraud, corruption, and favoritism in the contract selection process;

(2) The public policy against discriminatory or inconsistent application of selection requirements for public works projects;

(3) The public policy prohibiting persons and/or entities seeking to build public works projects from acting in bad faith;

(4) The public policy that all persons seeking to build public works projects operate on a level playing field with all parties having equal access to information needed to compete; and

(5) The public policy that goods and services to be procured for public works projects be described in a fashion that does not give one competitor for the project an advantage over other competitors for the project.

The following sections of this report analyze the primary contracting mechanisms used by the State of Connecticut, to determine whether existing statutes and agency practices adequately protect and promote the State's contracting policies. Based on this analysis we conclude that there are many areas in which our laws can and should be strengthened and clarified.

SUMMARY OF EXISTING MAJOR CONTRACTING MECHANISMS

The State of Connecticut utilizes a number of different procedures to select state contractors. The most frequently used are competitive bidding, in which the contract is awarded to the lowest responsible and qualified bidder, and "design to build," in which the state defines the general parameters of the project and, through a competitive process, selects the developer determined to be best able to give the state what it is looking for. This section briefly summarizes the major steps in each of these processes as used by the state's primary contracting agencies: the Department of Public Works, the Department of

Transportation, the Department of Administrative Services and the Department of Information Technology).[1]

(A) COMPETITIVE BIDDING OR "LOW BID"

The first step of the contracting process is the determination that there is a need for the service or project and obtaining authorization for funding the contract.

For a public works project, the agency would generally retain an architect or design consultant, who in turn, would typically retain subcontractors such as engineers. These consultants would prepare the "contract documents" required by the state agencies involved, including the specifications, plans and drawings which form the substantive basis for the project. The "contract documents" will be incorporated into bidding documents which the state agency will supply to firms interested in submitting bids.

Bidding documents are advertised in newspapers and trade publications to solicit interested bidders who are supplied with the bidding documents. A deadline is established for submitting bids to the contracting agency.

On occasion, pre-bid meetings are held by the state agency at which all firms interested in the project can ask questions, and listen to the answers to the questions to clarify any issues with the bid. Sometimes there is an opportunity for a site visit. Important information generated at the pre-bid meeting or any clarifications can be forwarded to all interested firms as an addendum to the bid package.

When bids are submitted they are supposed to be sealed and common practice is for most bidders to submit their bids very close to the filing deadline.

At the bid deadline all bids are opened publicly and all bid submissions are available for public inspection. Unsuccessful bidders can submit bid protests shortly after the bids are opened.

The bid of the low bidder is then reviewed by the state agency for compliance with all of the bid rules. The agency will also ascertain whether the low bidder is a responsible and qualified bidder. The process will end with the agency awarding the bid to the lowest responsible and qualified bidder.

(B) DESIGN TO BUILD PROJECTS.

Generally, the first part of this process is also to determine that there is a need for the project and to obtain the necessary state approvals and funding for the project.

For a public works project, the next step would generally be the retention of a consultant to work with the state agencies involved. This consultant would typically work with the agencies involved to develop a program for the project consisting of a basic design and details and a set of criteria to define the parameters of the project. If critical

[1] While there are other agencies that contract on a regular basis, these four agencies, as a general matter, enter into the most expensive of the state's contracts with outside vendors. In addition, there are some agency-specific variances that are not included in this report.

design elements are important, the program will specify them. This consultant will also work with the agencies to develop a Request for Proposals ("RFP") describing the program.

In some instances that state may wish to limit the number of proposals to be considered and will prequalify firms potentially interested in the project. At times this is done, typically at the Department of Transportation, through a structured prequalification process. Other times this is done through issuing a Request for Qualifications ("RFQ"). When an RFQ is utilized, the consultant will often work with the state agencies to develop the qualifications. Generally an RFQ process and RFP process are similar. An RFQ may be used first to limit competition to firms determined in advance to be qualified.

The RFP (and RFQ if an RFQ is utilized) will be advertised and will request submission of proposals. Competitors for the project may make submissions in response to RFQ and/or RFP documents. These submittals must contain all of the information required by the RFP and RFQ — failure to do so may result in the rejection of the firm from further consideration in the competition.

An agency selection panel will typically review the proposals submitted by the competing entities and develop a "short list" of entities to be interviewed. Where an RFQ is used, the firms deemed to be qualified following the RFQ may be considered to be the "short list" eligible to make submissions in response to the RFP.

A separate selection panel evaluates the proposals on the "short list" and interviews each proposer. This selection panel votes on each proposer based on criteria including cost, design, meeting the program in the RFP, architectural design and qualifications. The selection panel then recommends a specific firm to be awarded the project.

Thereafter, the agency negotiates contract language, final price, final design, and final program, with the successful firm.

RECOMMENDATIONS FOR REFORMING STATE CONTRACTING: A COMPREHENSIVE APPROACH.

The following preliminary reform proposals are important first steps in restoring integrity to the process of awarding and administering state contracts. To the extent possible, state agencies that have the highest cost contracts — DPW, the Department of Administrative Services ("DAS"), the Department of Transportation ("DOT") and the Department of Information Technology ("DOIT") — should consider ways to immediately implement these proposals.

A. RECOMMENDATIONS FOR IMPROVING EXTERNAL OVERSIGHT OF STATE CONTRACTING

The following proposals are designed to improve the ability of ethics regulators, the Attorney General and other law enforcement agencies to monitor state contracting for abuse and to punish corrupt and abusive practices by state officials and private entities and individuals.

1. There must be an Independent Contract Review Board or, in the alternative, the State Properties Review Board must be empowered to review the awarding of state construction and large scale procurement contracts.

Presently, there is no independent agency or official that, as part of its explicit statutory responsibilities, reviews the reasonableness and propriety of the process under which state contracts are awarded to construction contractors, construction consultants, and private vendors who provide large quantities of materials or equipment. Certainly, internal review of contract selection by contracting agencies is desirable and should be expanded. However, it is necessary to empower an independent state agency to perform a searching examination of the process under which such contracts are awarded. It may be desirable to create a new state agency specifically to perform this function. In the alternative, the legislature may prefer to expand the authority of an existing agency, such as the State Properties Review Board, to include contract selection review.

In either case, the awarding of all major state contracts for construction, equipment, materials or commodities should be reviewed by an independent agency for issues of fairness, legality, and reasonableness, and such contracts should not become effective without that agency's approval. The agency should have access to all materials relating to the selection process. In addition, the agency should have all necessary resources and authority to investigate potential irregularities, including the authority to obtain and review contractor and agency records and to subpoena other documents and testimony. Each contract should explicitly require full cooperation by the contractor with this independent review agency. If the agency concludes that any applicable law has been violated, it should have the authority to refer the matter to the Chief State's Attorney, the State Ethics Commission and/or the Attorney General for appropriate investigation, litigation and/or prosecution.

2. There must be established a code of ethics governing private individuals and entities doing business with the state.

There must be a code of ethics for contractors, vendors, consultants and others who seek to do business with the state (a "Contractor/Consultant/Vendor Code of Ethics"). That code must include, at a minimum, the following provisions:

- A provision forbidding an entity or individual seeking to do business with the state from giving or promising any good(s) or service(s) of value, other than those things exempted from the definition of gift in Conn. Gen. Stat. § 1-79(e)(as revised as suggested herein), to any state official or employee who is directly or indirectly involved in the process of awarding, administering, or overseeing the contract being sought, including state officials, such as the Governor, who have appointing or oversight authority over the contracting state agency. These prohibitions should also apply to prohibit the giving or promising of gifts to the family members of such state officials or employees or to businesses with which the state employee or official is

associated. These provisions would also prohibit offers of employment to state officials and employees directly or indirectly involved in the process of awarding, administering or overseeing contracts sought by those entities, including state officials and employees who have appointing authority over the contracting agency. In appropriate circumstances, this prohibition should extend to the family members of such state employees.

- A provision forbidding any consultant who assists a state agency in planning or designing a construction project from performing any part of the construction of that project either as a general contractor or as part of a general contractor's team of subcontractors and consultants. A construction consultant who assists in planning or designing a construction project must also be prohibited from offering his services or knowledge of the project, or any information he has received about the project in his capacity as consultant to the state agency, to an entity who is competing or likely to compete for the contract to construct that project, unless the contracting agency makes the consultant's information equally available to all competitors.
- A provision forbidding an entity or individual seeking to do business with the state from in any way soliciting non-public or not-yet public information that would provide a competitive advantage in obtaining a state contract where that information is not made equally available to all others seeking the same contract.
- General provisions prohibiting those seeking to do business with the state from attempting in any way to circumvent applicable competitive bidding or other competitive selection processes.
- Provisions forbidding an entity or individual from intentionally or recklessly overcharging the State for work performed or goods or services provided, for example, by charging for work that is not performed or goods or services not provided, submitting "change orders" that increase the contract price in bad faith, charging rates that are unjustifiable, or falsifying invoices or bills.

Compliance with the Contractor/Consultant/Vendor Code of Ethics should be incorporated as a standard contract clause into all procurement, consultant or construction contracts between the state and private entities or individuals. Contractors must also be required to incorporate the code into their contracts with subcontractors.

There must be multi-pronged enforcement of the Contractor/Consultant/Vendor Code of Ethics. Contracting state agencies must be empowered to void contracts when they determine that a contractor has violated any applicable ethical restriction. Contracting agencies must also be permitted to designate violators of ethics laws as nonresponsible contractors or vendors or to refuse to prequalify violators as eligible for

state contracts. The State Ethics Commission must be empowered to investigate violations of contractor/consultant/vendor ethical codes and when appropriate to impose administrative sanctions, including fines, disgorgement of ill-gotten gains, and appropriate injunctive relief. The State Ethics Commission must have the authority and resources to refer such violations to the Attorney General for civil litigation for recovery of civil penalties and other appropriate relief. In addition, the violation of contractor/consultant/vendor ethics requirements must be punishable by criminal sanctions. Finally, any violation should, by statute, be deemed a per se violation of the Connecticut Unfair Trade Practices Act ("CUTPA"), thereby providing for civil penalties and other CUTPA relief.

3. The Code of Ethics for state employees and officials must be strengthened and clarified

Not only must ethical requirements be codified for those doing business with the state, but the existing ethics laws governing state employees and officials must be strengthened and clarified.[2] The following reforms to the Code Of Ethics For Public Officials, Conn. Gen. Stat. § 1-79 et seq., should be instituted:

- Annual statements of financial interest ("SFIs"), required by Conn. Gen. Stat. §1-83(a)(1) should be required of a greater range of public officials. Currently only certain specified classes of officials are explicitly required to file SFIs, and the Governor has discretion to identify additional classes who must do so. The Governor should have no involvement in defining the discretionary coverage of the SFI requirement. Rather, that function should be exercised by the State Ethics Commission. At a minimum, SFIs should be required of all state officials who play a significant role in awarding state contracts.
- Currently, the SFI calls for disclosure of sources of income in excess of $1,000. This limit is too high and should be significantly reduced to $500 or lower.
- The SFI requirement should be clarified to require disclosure of gifts as income if their value meets or exceeds the threshold for other forms of income that must be disclosed (currently $1,000). Currently, neither the SFI form nor ethics regulations of the State Ethics Commission governing the SFI requirement make clear that gifts are to be considered income that must be disclosed. There should be no doubt that income includes gifts for purposes of the SFI disclosure requirement. Income in the form of gifts as defined in Conn. Gen. Stat. §1-79(e) (as revised as suggested herein) received from those having done, doing or seeking to do business with a state agency or department with which the official is or was employed, or over which

[2] Current events have made clear the crucial role of the State Ethics Commission. As a general matter, the legislature must give serious consideration to measures that would preserve the independence of the State Ethics Commission and protect it from political pressures, including pressures applied through the budgeting process.

the official has or had appointment or oversight authority, should be reported regardless of value.

- The Code of Ethics should be revised to make clear that submitting a falsified SFI or one with material omissions is punishable by criminal sanctions. The State Ethics Commission should have the authority to impose administrative sanctions under such circumstances or to refer the matter to the Attorney General for commencement of litigation to recover civil penalties and other appropriate relief.

- The exception to the definition of "gift" in Conn. Gen. Stat. § 1-79(e)(12) for gifts to an individual state official for the celebration of a major life event must be substantially revised and limited. There is currently no dollar value limit to this exception. The major life event exception should be limited to gifts under $100 in value.

- In addition to the SFIs currently required under Conn. Gen. Stat. §1-83, annual sworn ethical filings should be required of agency officials and employees who play significant roles in awarding state contracts. Those filings should disclose gifts (as defined under Conn. Gen. Stat. §1-79(e) as revised as suggested herein) from persons or entities who sought or obtained state contracts or who sought or obtained any prequalification status for purposes of seeking state contracts. The disclosure should include gifts for major life events. Submitting a falsified filing or one with material omissions should be punishable by criminal sanctions. The State Ethics Commission should have the authority to impose administrative sanctions or to refer the matter to the Attorney General for commencement of litigation to recover civil penalties and other appropriate relief.

- The three year statute of limitations contained in Conn. Gen. Stat. § 1-82(d) for violations of the Code of Ethics should be extended to five years. Moreover, §1-82(d) should make clear that fraudulent concealment of ethics violations — by falsifying or omitting information from an SFI, other required forms or declarations, or state or federal tax filings — tolls the statute of limitations. Finally, there should be no statute of limitations prohibiting the State Ethics Commission or Attorney General from seeking disgorgement of ill-gotten gains (as opposed to civil penalties, fines and other relief).

- The provisions of Conn. Gen. Stat. §1-84(m)(1) currently prohibit a public official from accepting directly or indirectly a gift if the official knows or has reason to know that the giver is doing or seeking to do business with the department or agency in which the official is employed. This provision should be clarified to make explicit that the Governor, his staff and officials of Office of Policy and Management are prohibited from accepting gifts from those doing or seeking to do business with the state.

- The provisions of Conn. Gen. Stat. §1-84(c) currently prohibit public officials from disclosing for financial gain confidential information acquired in the course of their official duties. A similar prohibition for former public officials is contained in Conn. Gen. Stat. §1-84a. These provisions should be clarified to make clear that they prohibit any official involved or previously involved in the process of awarding state business from disclosing confidential information if the communication is likely to result in the recipient being advantaged in a competitive bidding process over other competitors. This prohibition should not be dependent on receiving financial gain for such disclosures.

4. The Whistleblower Statute Should Be Strengthened and Whistleblowers Should be Given Additional Protection.

The whistleblower statute should be strengthened to provide a greater ability to ferret out corruption and mismanagement, to permit legal action to be initiated, as well as providing greater protection for whistleblowers. This is described in part V of this report below.

5. Require stricter standards and scrutiny of contracts to privatize significant functions performed by state employees.

Contracting abuses exposed to date stem substantially from large profits made on state contracts. Career state employees do not have a comparable personal financial stake in projects they supervise or operate, greatly reducing the likelihood of problematic contract practices. State employees have high level skills which the state should utilize. Close, critical scrutiny is necessary to prevent abuse or waste, especially when privatization will prove less cost effective and less efficient. Accordingly, legislation should require that all privatization contracts be reviewed by the independent contract review body recommended here. The legislature should establish standards for approving such contracts to ensure they achieve actual fiscal savings while maintaining the quality of services and protecting public healthy and safety.

B. Recommendations for Improving Internal Agency Oversight of Contracting

The following proposals are designed to create effective internal structures and mechanisms under which state agencies can monitor and control their contracting practices.

1. Certain agencies should designate a single high level official responsible for ethics oversight and training.

Most state agencies do not have a single designated official responsible for ethics oversight. Agencies that routinely engage in construction contracting and large scale commodities or equipment procurement, particularly the DPW, DOT, DAS, and DOIT, should create an Ethics Compliance Officer position, whose mission is the development of ethics policies, ethics training programs and materials, reporting and monitoring of

ethics compliance. The Ethics Compliance Officer should be divorced from the process of awarding or administering particular contracts, but rather should scrutinize the ethics aspects of such processes in general and as applied in particular instances. This officer would be tasked with annually reviewing agency policies for ethical problems and coordinating the development or revision of ethics-related policies. The Ethics Compliance Officer would also be responsible for developing training programs and materials on ethics for agency employees and contractors. He or she would also be empowered to receive and investigate ethics complaints involving agency employees and outside contractors. Construction and procurement contracts should, and often already do, include language permitting the agency to access and review contractors' records for purposes of auditing performance. These clauses should be redrafted to require cooperation with inquiries concerning ethics issues in both obtaining and performing the contract. The Ethics Compliance Officer should report directly to the agency head or, if appropriate, to bypass the agency head to report concerns to appropriate external authorities, such as the Auditors of Public Accounts, the Ethics Commission, the Attorney General or the Chief State's Attorney. Agencies should devote sufficient resources and staff to the Ethics Compliance Officer so that he or she can effectively accomplish the purposes of the position. While smaller agencies or agencies that do relatively little or no construction or large scale commodities or equipment contracting should not be required to devote a staff member exclusively to ethics oversight, such agencies should designate an employee to serve as liaison to the State Ethics Commission. The State Ethics Commission should serve as a resource for such agencies, providing training resources, advice, and other ethics-related support as necessary.

2. All agencies engaged in construction or large scale commodities or equipment procurement must promulgate written selection criteria and procedures that are fair, consistent and open to public scrutiny.

To ensure that the awarding of state business is fair and to restore public confidence in the fairness of the process, state agencies must develop, publicize and apply objective, impartial and even handed criteria and procedures to the selection of construction contractors, construction consultants, and vendors of commodities or equipment on a large scale. Some agencies engaged in such contracting already have established comprehensive written policies and procedures governing contractor selection, which are made widely available through the internet and otherwise. Remarkably, other major contracting agencies, including DPW, have not yet codified their selection policies in written form[3] The promulgation of such written policies, including contractor selection criteria applicable to selection of construction contractors, construction consultants, and vendors of commodities or equipment on a large scale must

[3] Section 7(a) of Public Act 03-215 requires the Commissioner of Public Works to adopt regulations that include "objective criteria for evaluating the qualifications of bidders and the procedures for evaluating bids after the prequalification status of the bidder has been verified." The new act does not, however, explicitly require DPW to develop objective criteria for evaluating proposals, as opposed to the evaluation of the qualifications of bidders.

be a top priority for all other major contracting agencies that have yet to do so.[4] In developing selection criteria to apply to competitive contract bidding, agencies must strive for objectivity, focusing on issues of qualification, cost, experience, responsibility and integrity. The criteria and the procedures used to apply them must be in written form, developed with meaningful opportunities for public participation. Once established, these criteria and procedures must be made widely available to the public through written and electronic means. Criteria and procedures must be applied consistently and never, except under the most unusual and necessary circumstances, changed midstream.

3. State employees involved in contracting or procurement must receive adequate training and information on ethics requirements.

It is imperative that all state employees involved in construction contracting and large scale materials procurement know the ethics requirements and restrictions of their jobs. There is currently no requirement, however, that such state employees undergo ethics training. Agencies that routinely engage in large scale construction contracting and commodities/equipment procurement, particularly the DPW, DOT, DAS, and DOIT, should, with the assistance of the Ethics Commission and the Attorney General, develop and provide ethics training materials and programs for their employees. Annual training on ethics should be mandatory for all employees of agencies who participate in such contracting or procurement, and ethics updates and bulletins should be provided to those employees as often as necessary.

4. Contractors doing business with the state must be educated about the ethics requirements of their activities.

There appears to be no systemic effort on the part of agencies to educate contractors about the ethics aspects of seeking and performing state contracts. While some of this information is available from various sources, agencies can and should systematically communicate ethics information to those seeking the state's business. To that end, any contractor or consultant seeking prequalification status should be required to review all applicable ethics laws, including the proposed Contractor/Consultant/Vendor Code of Ethics (see above). No applicable prequalification status should be granted absent a certification by the company that its principals and key contracting personnel have received and read such materials. In addition, all bids or proposals for contracts competitively awarded for construction, construction consulting services, and large procurements of commodities or equipment should include a similar sworn certification that all members of the bidding or proposing firm or team, including key employees of listed subcontractors, have received and reviewed state ethics materials. No bidder should be deemed qualified or responsible if it cannot make such a certification, and its bid should be rejected on these grounds.

[4] The selection of personal service providers, consultants (other than contracting consultants assisting in the development of large scale construction contracts) and small materials vendors may require somewhat different safeguards.

5. General contractors should obtain ethics certifications from their subcontractors.

As a standard requirement of state construction contracts, construction contractors must be required to provide state ethics materials to their subcontractors and to obtain certifications from those subcontractors that they have received and read such materials. In addition, subcontractors should also certify that they have provided no gifts or promises of gifts as defined in Conn. Gen. Stat. § 1-79(e) (as revised as suggested herein), loans or other items or services of value to state officials or employees of the contracting agency or of a state agency or department which has supervisory or appointing authority over the contracting agency during the previous ten years. General contractors should gather and retain such subcontractor certifications and provide them upon request to the contracting agency or any state agency or official with oversight of the contracting process.

6. Certain state officials must be required to report suspected unethical or illegal conduct in state contracting.

It is essential that high level state officials report conduct that they suspect to be unethical or illegal. Thus, if the head of a contracting state agency or the highest official of such agency having responsibility for ethics oversight has substantial reason to believe that unethical or illegal conduct has been committed by any person in connection with the awarding or performance of a state contract, he should be required by statute to report the matter to all of the following: the Auditors of Public Accounts, the State Ethics Commission, the Chief State's Attorney and the Attorney General.

C. Recommendations for Increasing the Civil and Criminal Sanctions Applicable to Contracting Fraud and Abuse

In addition to the new or increased criminal or civil sanctions discussed in connection with the proposals recommended throughout this report, the following sanctions should be available by statute to punish and deter fraud, corruption and abuse in state contracting.

1. Ethics violations by contractors should result in the forfeiture of the bid bond.

Currently, a bid bond is required of individuals or entities bidding on certain state contracts. On DPW construction projects, bid bonds must equal ten percent of the bid. See Conn. Gen. Stat. § 4b-92. Under current law, failure by a contractor to execute a contract as awarded results in the forfeiture of its bid bond. The agency should also have the statutory authority to retain a bid bond to the extent of the agency's additional costs caused by a contractor's violation of applicable ethics laws.

2. Any state employee or official who is convicted of a crime or serious ethics violation in connection with his public duties should lose pension benefits.

Connecticut law does not automatically revoke a public official's pension benefits when he is convicted of a crime in connection with his official duties. While certain legal theories and causes of action exist for seeking disgorgement of pension benefits under such circumstances, the law must be clarified to make this remedy more easily and widely available. The State Ethics Commission should have statutory authority to revoke pension benefits as one of its available remedies when it finds that a state official has committed a serious ethics violation in connection with his official duties. Moreover, the Ethics Commission should have statutory authority to refer matters to the Attorney General for purposes of initiating litigation to recover or revoke pension benefits from unethical state employees. Finally, when a state official is convicted criminally of violating state law in connection with his public duties, the sentencing judge should have explicit authority to revoke pension benefits. The amount of pension revocation under any of these scenarios should be not less than the amount attributable to any year in which the ethical misconduct occurred.

D. Recommendations Applicable to Low Bid, Design To Build and Construction Consultant Selection Processes

The following reform proposals pertain to low-bid, design to build and construction consultant selection processes.

1. The requirement of sworn affidavits concerning gifts must become a permanent prerequisite for approval of all state contracts over $100,000

Recently, the Attorney General instituted a requirement that all entities and individuals seeking a state lease or contract having an original or amended value in excess of $100,000 submit a sworn affidavit disclosing any gifts, loans or other items of value given by them or their employees to state officials or employees of the contracting agency or of a state agency or department which has supervisory or appointing authority over the contracting agency during the previous ten years.[5] A similar policy now requires state employees and officials involved with the selection of contractors to disclose any gifts received within ten years from individuals or entities selected for a contract. The Attorney General will not review or approve any contracts unless such affidavits are provided. State agencies have been asked to voluntarily assist in implementing and facilitating this policy. This policy should be codified in legislation as a permanent prerequisite to contract approval. Moreover, legislation should be passed providing for specific criminal sanctions for the falsification of such affidavits.

[5] The $100,000 threshold should apply to both individual contracts in excess of that amount and to multiple contracts granted to a single agency or individual during a single biennial budget cycle that in the aggregate exceed $100,000.

2. Additional certifications and sworn statements should be required of contractors and state officials involved in the contracting process.

One potential opportunity for abuse in the contracting process is the selective provision of beneficial, non-public or not-yet public information to some contract bidders, while withholding that information from others. These sorts of disclosures create uneven playing fields, providing unfair advantages to the bidding contractor who receives such information. Public Act 03-215, which will become effective on October 1, 2004, addresses this issue in part, establishing that "[n]o employee of the Department of Public Works, the joint committee or a constituent unit with decision making authority concerning the award of a contract may communicate with any bidder prior to the award of the contract if the communications results in the bidder receiving information about the contract that is not available to other bidders[.]" Public Act 03-215 §1(b).[6] The new act also requires that "[a]ny person who receives information from a public official that is not available to the general public concerning any construction, reconstruction, alteration, remodeling, repair or demolition on a public building prior to the date that an advertisement for bids on the project is published shall be disqualified from bidding on the project." P.A. 03-215 §1(f).

These requirements should be extended to apply not just to Department of Public Works projects, but to all state contracts awarded on a competitive basis. Moreover, approval of such contracts should be conditioned on provision of sworn affidavits by employees and officials of both the contracting agency, any outside consultants working for the agency in the design or planning of the project, and the outside contractor that no such non-public or not-yet public information concerning the project was given, received or solicited during the contract selection process. If such communications have occurred, they should be disclosed so that their propriety may be evaluated before the contract is approved. Specific criminal sanctions should be available for the falsification of such affidavits. In addition, the State Ethics Commission should have authority to sanction such a falsification or refer the matter to the Attorney General for litigation to recover civil penalties, fines and other appropriate relief.

3. Additional procedures must be instituted to ensure that information is provided on an equal basis to all bidders.

In order to avoid the reality or appearance of favoritism, all agencies must make certain that information concerning projects or procurements is equally available to all interested bidders. It is unacceptable, for example, for an agency employee to provide a single bidder with potentially advantageous information or clarification on contract specifications without simultaneously providing it to all bidders. Some agencies have not created written policies to ensure that information is fairly and equally provided during the contractor selection process. All agencies that award contracts on a competitive basis must have such policies, which should provide at a minimum that any pre-bid inquiries concerning the specifications of an advertised project are made in writing only. Similarly,

---

[6] State agencies are encouraged to enforce and comply with Public Act 03-215 as soon as practicable rather than waiting until October 1, 2004 to do so. The legislature should also consider advancing the effective date of the act.

all answers to such inquiries should be in written form simultaneously communicated to all competitors for the contract, with the exception of oral communications made at pre-bid meetings to which all interested parties are invited. Records of such meetings must be maintained and information provided therein must be made available in written form to parties not present at the meetings.

Requests for information or clarification of project specifications made during the period between the advertisement of a competitive bid project and the bid deadline, however received, should be entered in a log maintained by the contracting agency, to include the identity of the party inquiring, the date of the inquiry, the general nature of the inquiry, the employee or official responding to it, and the manner in which it was responded to. This kind of communication log should be maintained both by the agency doing the contracting and the agency for which the contract is being performed. For example, where DPW is developing a building on behalf of another state agency, both DPW and the other state agency should maintain such communication logs.

4. All bids and proposals must include sworn certifications concerning certain ethics matters.

Section (1)(e) of Public Act 03-215 requires that any person bidding on a public building project must certify at the conclusion of the bidding process that information contained in the bid is accurate and up to date and that the bid was made without collusion with or fraud by any person. This provision applies only to Department of Public Works projects involving the construction or alteration of public buildings. The requirement is therefore too narrow in its application and should be extended to all state construction contracts or large scale materials or equipment procurement contracts awarded pursuant to competitive selection processes. Moreover, the required submission should include additional certifications that the individual or entity seeking the contract, and employees or relatives of such individual or entity, have not (a) given or promised any gifts as defined in the ethics code (with suggested revisions detailed above) to state officials or employees of the contracting agency, to public officials having input into the contracting process or to officials with oversight or appointing authority over the contracting agency and its officials; or (b) obtained any non-public or not-yet public information concerning the project/procurement before the acceptance of his/its bid from a state employee or official that was not equally available to other bidders. Submitting a falsified or materially incomplete certification should be punishable by criminal sanctions. In addition, the State Ethics Commission should have authority to sanction such a submission or refer the matter to the Attorney General for litigation to recover civil penalties, fines and other appropriate relief.

5. Failure to comply with all ethics requirements or to provide sufficient information to determine compliance must be a ground for rejections of bids or proposals.

No state contract should be awarded to an entity or individual who violates applicable ethics laws or where the ethics, integrity or responsibility of such an entity or individual are lacking. Nor should a state agency award any contract to an individual or entity when there exist significant unresolved questions concerning the ethics, integrity or responsibility of that individual or entity. Finally, entities or individuals who fail to

provide sufficient information to evaluate their ethics, integrity or responsibility should not receive contracts. Statutes governing the awarding and rejection of bids and proposals (see, e.g., Conn. Gen. Stat. § 4b-94) should explicitly permit contracting state agencies to reject bids or proposals when any of these scenarios exists, even where the bid or proposal in question is the lowest or best bid under other criteria.

E. RECOMMENDATIONS TO REFORM THE DESIGN TO BUILD CONSTRUCTION SELECTION PROCESS

Because design to build selection processes are inherently more subjective than low-bid selections, they raise heightened concerns with regard to favoritism, corruption and abuse. The following proposals seek to create greater transparency and reliability in design to build selection processes.

1. Selection panel members must explain their votes.

As described above, most design to build and many construction consultant selections are decided by selection panels, whose members typically rate proposals by order of preference. Currently, no explanation of a panelist's ranking is required. There should be a requirement that all panelists submit a narrative explanation of how they arrived at their top choice. These narratives should be forwarded to the agency head with the panel's rankings. The narratives should be maintained as part of the selection record, reviewable by any agency or official with oversight of the contracting process.[7]

2. The Commissioner must explain in writing when he deviates from a selection panel's recommendation and must certify that such deviations are not the product of unlawful considerations.

Currently, agency heads are not required to follow selection panel recommendations. Nor are they required by law to explain in writing their reasons for deviating from a panel's recommendation. Public Act 03-215(8)(e) requires the Commissioner of DPW to prepare a memorandum indicating how he applied the applicable selection criteria in choosing among the firms recommended by the selection panel. This should be required of all agency heads when they select a contractor from a list proposed by a selection panel, and the law should be clarified that the agency head must make particularized findings explaining any deviation from a selection panel's recommendation and how the deviation is in the best interests of the state. Moreover, when such a deviation occurs, the agency head should certify under oath that the selection was not the product of any collusion, gift, promise, compensation, fraud, favoritism, undue pressure from any person, or request from any person other than or outside the normal selection process. Submitting such a certification containing falsehoods or material omissions should be punishable by criminal sanctions. In addition, the State Ethics Commission should have authority to sanction such a false or materially

[7] Section 8(e) of Public Act 03-215 requires DPW's Construction Selection Award Panel to prepare a joint memorandum explaining the panel's application of objective selection criteria. This provision does not apply to selection panels of agencies other than DPW. Moreover, it would be more helpful for each individual panelist to prepare his or her own selection narrative.

incomplete certification or refer the matter to the Attorney General for litigation to recover civil penalties, fines and other appropriate relief.

3. Selection panel members must submit ethics certifications with their ballots.

Similarly, selection panelists should submit with their ballots a sworn certification that their votes were not the product of any collusion, gift, promise, compensation, fraud, undue pressure from any person, favoritism, or requests by persons outside of the normal contractor selection process (i.e., other than deliberative discussions among the panelists and bidder presentations). In addition, the panelists should certify that (1) they have no familial or business relationships with any firm or person seeking the contract or with any relatives or business associates of any such firm or person; (2) that they have not provided any material information to any person concerning the selection process or project at issue other than that which was made equally available to all interested parties; and (3) no solicitations of such information occurred. Submitting such a certification containing falsehoods or material omissions should be punishable by criminal sanctions. In addition, the State Ethics Commission should have authority to sanction such a false or materially incomplete certification or refer the matter to the Attorney General for litigation to recover civil penalties, fines and other appropriate relief.

4. Selection panelists must maintain communications log.

In order to create a record of potentially improper contacts during the selection process, all selection panel members should be required to maintain communications logs. All communications made outside of the formal selection process by any person concerning a selection under consideration occurring between the advertisement of a project and selection balloting must be logged. Routine communications from agency staff concerning the mechanics or logistics of the selection process, as opposed to the outcome of the process or the merits of a competitor, would be excluded. The log must note the date of such communications, the parties to it, and its general subject matter. These communication logs must be certified as true and complete, and they must be maintained in the records of the selection process and made available to any agency or official with review authority over the selection process. Submitting such a certification containing falsehoods or material omissions should be punishable by criminal sanctions. In addition, the State Ethics Commission should have authority to sanction such a false or materially incomplete certification or refer the matter to the Attorney General for litigation to recover civil penalties, fines and other appropriate relief.

5. Selection proceedings and records must be open to publicly scrutiny.

To the maximum extent possible, the records and proceedings of all agencies' selection panels must be open to public scrutiny once a contract is awarded or the process is ended. Written minutes and agendas should be made of all meetings of such panels. Written materials of the selection process, including agendas, minutes, ballots, decision memoranda, proposal materials, communication logs and letters to the panel, should also be available for public scrutiny after the completion of the selection process. Any exceptions to public disclosure of such materials, such as exceptions for protection of trade secrets, must be strictly construed and limited.

F. RECOMMENDATIONS TO REFORM LOW BID SELECTION PROCESSES

1. Agencies must maintain adequate records to permit identification of irresponsible and unethical contractors.

Current law, together with Public Act 03-215 (effective October 1, 2004), provides opportunities for state agencies to identify unreliable or dishonest contractors and vendors and to formally refuse to contract with such entities. For example, the criteria for certain contractor prequalifications encompass considerations of responsibility and integrity. In low bid selections, agencies are required to accept the lowest bid from a *qualified* and *responsible* bidder. Here again, the determination of responsibility and qualification allows an examination of a contractor's ethics and integrity.

Unfortunately, there is great variation in the frequency with which state agencies undertake to formally identify nonresponsible bidders. DOT, for example, has in many instances undertaken the necessary procedural steps to declare a contractor nonresponsible, such that it cannot receive a particular contract. DPW, on the other hand, has no track record of making such determinations. One reported explanation for this disparity is that DPW fails to maintain adequate records of contractor performance. Without sufficient documentation, nonresponsibility determinations or refusals by DPW to pre-qualify contractors will be difficult to establish and/or sustain against legal challenges. DPW, as a matter of policy, should review the record keeping procedures of other agencies in order to adopt those procedures which would permit more aggressive identification and action against nonresponsible contractors.

Section 4 of Public Act 03-215 will require that contractor evaluation forms be completed by state agencies after the completion of building projects. These forms do not, however, require evaluation specifically of ethics and integrity issues. Nor does the new public act require that contemporaneous evaluative records be compiled and maintained during the performance of a contract. As a matter of policy, agencies should maintain and regularly update contractor performance files. Project managers and other agency employees in a position to be familiar with a contractor's performance should periodically file contractor evaluation forms along the lines of those required by P.A. 03-215, but expanded to include any information concerning unethical contractor behavior. Contractor performance files should include any and all necessary supporting documentation. Armed with this level of documentation, agencies can and should be more aggressive in formally designating nonresponsible and unethical contractors, thereby prohibiting such contractors from obtaining future state contracts.

G. RECOMMENDATIONS APPLICABLE TO SPECIAL SELECTION PROCESSES

1. The use of non-competitive selection processes should be avoided to the maximum extent possible.

As noted above, the legislature has authorized certain construction projects by special act, sometimes explicitly exempting such projects from one or more aspects of

competitive contractor selection. As a matter of policy, this procedure should be avoided whenever possible. Moreover, the legislature should create a statutory requirement that, whenever a special construction or large scale purchase act is passed that is silent or unclear on the issue of competitive selection, the agency or agencies having responsibility for that project must apply normal competitive selection processes.

2. Any agency determination that an emergency requires deviation from normal competitive selection processes should be adequately documented.

Agencies should themselves avoid deviation from competitive processes in contracting for construction, construction consultant services and large purchases of materials or equipment. Currently, certain agencies are permitted to award such contracts outside the normal selection processes in the event of emergencies.

Public Act 03-215(1)(g), which is applicable to construction projects performed on behalf of any agency by DPW, requires that any agency seeking to have a project awarded without competitive bidding must certify to the General Assembly that the project is of such an emergent nature that an exception to normal bidding requirements is necessary. Information detailing the nature of the emergency must accompany the certification. This requirement is sensible and should apply to all construction, construction consulting and large scale procurement contracts, including those awarded by agencies other than DPW.

H. Recommendations for Reducing Abuses in the Performance of Contracts

The following recommendations are intended to curb abuses that occur or come to light after the awarding of a contract or that relate to the performance of contracts.

1. All state construction and procurement contracts must contain termination for convenience and ethics termination clauses.

In order to provide state agencies with the ability to extricate themselves from contracts with unethical contractors or contractors of questionable ethics, all state construction and procurement contracts should contain termination for convenience and ethics termination clauses. Termination for convenience clauses simply allow the agency to terminate for any reason at any time, paying the contractor for its costs but not profits up to the date of the termination. These clauses can be useful when questions arise as to the ethics and integrity of a contractor such that continuing the contract is not in the best interests of the state. Contracts should also include standard clauses incorporating by reference all state laws governing state contracting ethics and permitting the state to terminate contracts when an ethics violation has occurred in the awarding or performance of the contract or when there is sufficient reason for the agency in its sole discretion to conclude that such a violation has occurred and that it would be in the public interest to void the contract.

2. Change orders that significantly increase the costs of projects must be closely monitored and avoided whenever possible.

After the awarding of a construction contract, unforeseen circumstances often arise that increase the overall costs of construction. These occurrences typically result in the proposal of a contract revision, or "change order," that increases the project's total construction costs. When change orders occur, the cost of the project can significantly exceed the cost stated in the contractor's bid or proposal. Certainly, change orders are often necessary and proper. Troubling questions arise, however, when significant change orders are proposed immediately or shortly after awarding of a contract and before substantial work is performed or when change orders constitute a substantial percentage of the total project cost. For example, if a change order is proposed by a contractor soon after its bid, was the bid artificially low? Consequently, procedures are necessary to encourage good faith bidding and limit change order abuse.

Contracts should be drafted such that any substantial change order proposed before significant work has commenced should void the contract and the project should be amended and rebid after payment to the original contractor of its legitimate costs. Substantial change orders should be defined as those equaling or exceeding a certain amount of the total contract price. Whatever newly discovered circumstances required the change order should be incorporated into the revised project advertisement. Of course, agencies should retain discretion to continue with a project without rebidding if time pressures so require. In this instance, agencies should document why rebidding is inappropriate.

Additional procedures are required to monitor change orders that arise after the commencement of work on a project, i.e., where it would be impracticable to rebid the project given the amount of work already performed. Agencies should develop mechanisms for review of substantial change orders and should have the discretion to cancel and rebid contracts when it appears that a contractor is proposing excessive or unjustified change orders.

V. THE EXISTING WHISTLEBLOWER STATUTE SHOULD BE SIGNIFICANTLY STRENGTHENED.

Substantive reforms designed to minimize corruption in public contracting, such as the recommendations in this report, should also be accompanied by expanded tools for identifying wrongdoing and mismanagement, as well as better protecting whistleblowers. Important enhancements to the existing whistleblower statute are summarized below.

(A) THE WHISTLEBLOWER STATUTE SHOULD BE AMENDED TO PROVIDE GENERAL AUTHORITY TO INVESTIGATE WRONGDOING AND MISMANAGEMENT IN STATE GOVERNMENT.

Connecticut law concerning investigations with respect to fraud and mismanagement in state government is too narrow. This needs to change. There should

always be a state official who is fully empowered to investigate fraud and mismanagement.

The provisions of Conn. Gen. Stat. §4-61dd, commonly known as the "Whistleblower Statute," split limited investigative responsibilities between the Auditors of Public Accounts and the Attorney General. These provisions are not broad enough to fully protect the public interest.

The beginning point of an investigation under Conn. Gen. Stat. §4-61dd(a) is someone having knowledge of "any matter involving corruption, unethical practices, violations of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety …" actually reporting such information. While there have been numerous whistleblower complaints that have led us to investigate aspects of the current public contracting scandal,[8] there is no certainty that future wrongdoing in state government that needs to be exposed and corrected will be accompanied by a whistleblower actually providing information. It has been argued that in the absence of an individual providing such information, the current whistleblower statute may not provide clear authority for exposing the wrongdoing. Section 61-dd, therefore, should be clarified to implicitly allow investigations to proceed without a specific complaining "Whistleblower."

There is also a major gap in the scope of Conn. Gen. Stat. §4-61dd. When this statute was expanded in 1998 to cover "large state contracts" the legislation incorporated a significant loophole. The definition of "large state contract" in Conn. Gen. Stat. §4-61dd(g)(1) specifically exempts "a contract for the construction, alteration or repair of any public building or public work…" While this provision does not in any way limit the authority to procure information material to an investigation of misconduct by state officials, it could well limit investigations that arise solely as a result of complaints about state contractors for construction contracts.[9]

There is presently a public concern that contractors were able to inappropriately manipulate the State of Connecticut's selection process for very large public works projects. This possibility is surely more than ample justification to eliminate the construction contract loophole for large state contracts under the whistleblower statute.

Finally, the current whistleblower statute is an "investigate and report" statute. Under Conn. Gen. Stat. §4-61dd the Attorney General is empowered to "make such investigation as he deems proper" following receipt of a report from the Auditors of Public Accounts. "Upon the conclusion of his investigation, the Attorney General shall where necessary, report his findings to the Governor, or in matters involving criminal

[8] Under Conn. Gen. Stat. §4-61dd we are required to keep the identities of such whistleblowers confidential.

[9] It can also cause substantial delay in investigations. Several Tomasso Group companies have filed motions to quash subpoenas issued to them by the Attorney General. Among other things they argue that the construction contract exception to the definition of large state contracts eliminates them from the reach of subpoenas under Conn. Gen. Stat. §4-61dd. While we are confident that the Superior Court will see through this obvious delaying tactic, that does not cure the delay. Under the strengthened whistleblower statute suggested here, it would have been much more difficult for the Tomasso Group companies to delay our investigation.

activity, to the Chief State's Attorney." Conn. Gen. Stat. §4-61dd(a). The whistleblower statute does not itself contain any civil or administrative remedies.[10]

A report to the Governor[11] about wrongdoing can be very hollow if that report is not explicitly backed by the authority to initiate appropriate legal action arising from the wrongdoing that is reported on. For example, if a whistleblower investigation reveals that the State of Connecticut was defrauded, then the report should be followed by a civil action against the wrongdoer. An important step in this direction would be accomplished by enacting a False Claims Act, as recommended below.

(B) THE WHISTLEBLOWER STATUTE SHOULD PROVIDE INCREASED PROTECTION TO WHISTLEBLOWERS.

The General Assembly has recently been moving in a positive direction by increasing protections for whistleblowers. Some additional steps would be very beneficial.

The provisions of Conn. Gen. Stat. §4-61dd were modified by Public Act 02-91 to permit whistleblowers who felt they were retaliated against to notify the Attorney General and, following the conclusion of the Attorney General's investigation, to file retaliation complaints with Human Rights Referees at the Commission on Human Rights and Opportunities ("CHRO"). This statute could be improved in two important respects. First, this protection against retaliation should be expanded to cover retaliation for providing information to the employing agency or anywhere else, rather than limited to retaliation for providing information to the Auditors of Public Accounts or Attorney General. In addition, a person who is the victim of retaliation for blowing the whistle should not have to await the conclusion of the Attorney General's investigation before being able to invoke the remedial mechanism of Conn. Gen. Stat. §4-61dd. Such a person should be able to seek relief immediately.

Also, no state employee, employee of a private contractor or other citizen should hesitate to report unethical or illegal conduct relating to state contracting out of a fear of being sued. Nor should corrupt officials or contractors be permitted to use lawsuits or the threat of lawsuits to squelch reporting or criticism of their misconduct. There should be a broad statutory immunity that protects any person from civil liability for commenting on, reporting, evaluating or otherwise making any statement about the conduct of any private or public individual or entity relating to state contracting. The immunity should apply in all instances except where the statement at issue was false and made with malicious intent and actual knowledge of falsity. This immunity should not be in lieu of any common law immunity or witness immunity providing greater protection.

---

[10] Under current Connecticut law the Chief State's Attorney has sufficient authority to commence a criminal prosecution if the evidence rises to the level of establishing criminal liability. The Chief State's Attorney has wisely formed a Public Integrity Bureau to deal with such issues. However, not all misconduct rises to the level of being criminal wrongdoing. Other remedies should be available in such circumstances.

[11] In addition, the whistleblower statute does not make any provision for reporting to someone other than the Governor in the event that the report addresses issues that may involve the Governor.

(C) THE STATE OF CONNECTICUT NEEDS A FALSE CLAIMS ACT.

Nowhere in state law is there a general provision allowing state officials to initiate legal action based upon false claims being submitted to the State of Connecticut. Enacting a False Claims Act, like the federal government and several other states,[12] would provide a clear legal remedy.

Current law does not provide effective civil remedies to deter fraudulent activity. Under the whistleblower statute, there is no provision for recovery of damages or civil penalties and no provision for injunctive relief to protect the state. A False Claims Act would remedy this weakness.

[12] The Commonwealth of Massachusetts, our neighbor, enacted a state False Claims Act as a result of the "Big Dig" scandal and massive cost overruns in that huge public works project.